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June 13, 1997

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Federal Communications Commission  
Office of Secretary

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

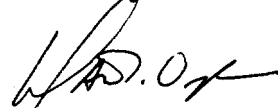
Re: MM Docket No. 87-268  
Advanced Television Systems And  
Their Impact Upon the Existing  
Television Broadcast Service

Dear Mr. Caton:

Transmitted herewith, on behalf of Capitol Broadcasting Company, Inc., is an original and four copies of its Petition for Reconsideration and/or Clarification Regarding DTV Table of Allotments and Any Presumption Concerning Channels 2-6 in the above-referenced Docket.

Should there be any questions, please communicate with the undersigned.

Sincerely,



David A. Vaughan

Enclosures

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**JUN 13 1997**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

*Federal Communications Commission  
Office of Secretary*

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

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MM Docket No. 87-268

**PETITION FOR RECONSIDERATION  
AND/OR CLARIFICATION REGARDING  
DTV TABLE OF ALLOTMENTS AND ANY PRESUMPTION CONCERNING  
CHANNELS 2-6**

June 13, 1997

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Tel: 202-457-5921

Its Attorneys

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
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MM Docket No. 87-268

To: The Commission

**PETITION FOR RECONSIDERATION  
AND/OR CLARIFICATION REGARDING  
DTV TABLE OF ALLOTMENTS AND ANY PRESUMPTION CONCERNING  
CHANNELS 2-6**

Capitol Broadcasting Company, Inc. ("Capitol") through its attorneys hereby petitions for reconsideration and/or clarification of two aspects of the *Sixth Report and Order* (adopted: April 3, 1997), 62 Fed. Reg. 26684 (May 14, 1997). In the Sixth Report & Order, the Commission adopted a Table of Allotments for digital television ("DTV"), rules of initial DTV allotments, procedures for assigning DTV frequencies, and plans for spectrum recovery.

Capitol operates full-service station WRAL-TV using NTSC channel 5 in Raleigh, N.C. and is an "eligible existing broadcaster" within the meaning of the Sixth Report & Order. The transition DTV channel allotted to WRAL is channel 53. See DTV Table of Allotments, Appendix B, Sixth Report & Order. If the Commission ultimately includes only channels 7-51 in the "final core DTV spectrum", neither NTSC channel 5 nor its DTV transition channel 53 will fall within that core spectrum. Capitol hereby seeks to assure that,

in such an event, WRAL-TV, as an "eligible existing broadcaster," will be allocated a channel within the final DTV core spectrum which replicates its NTSC service area to the maximum extent even if a LPTV or TV translator station, "other non-eligible broadcaster," or new entrant must be displaced; and that the broadcaster will be compensated for the cost of making a second transition to DTV.

### DTV TABLE OF ALLOTMENTS

The primary allotment objective in developing the DTV Table was to provide a channel for all "eligible existing broadcasters."<sup>1</sup> Id., paras. 1, 8 & 11. "Eligible existing broadcasters" is limited with respect to "initial eligibility for DTV licenses to 'persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station or both.'" Id., para. 8 (footnote omitted). The Commission rejected the idea that all eligible existing broadcasters should not receive a DTV allotment.<sup>2</sup>

In the Sixth Further Notice, the Commission emphasized that in assigning DTV allotments, "to the extent possible, [we] will allow all existing broadcasters to provide DTV service to a geographic area that is comparable to their existing NTSC service area." Id., para. 12 (footnote omitted). The Commission concluded that "[p]roviding DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers

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<sup>1</sup> "This approach will promote an orderly transition to the new service by assuring that all eligible full service broadcasters are able to provide digital service." Id., para. 11.

<sup>2</sup> "We disagree with those parties that suggest we provide allotments for fewer than all full service licensees in order to avoid the displacement of low power TV stations." Id., para. 11.

and broadcasters. This approach will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the air." Id., para. 29.

In implementing the policy of making transition DTV channels available to all eligible existing broadcasters, the Commission found that it would be necessary to displace a number of LPTV and TV translator operations, especially in the major markets. Id., para. 141. Thus, the Commission has acknowledged that it is necessary to "require a significant number of low power (LPTV) stations and TV translator stations to make changes in their operation, including the possibility of ceasing operation. [footnote omitted] In this regard we proposed to continue the secondary status of LPTV and TV translator stations." Id., para. 6.

In developing DTV allotments, the Commission believed that the core region of 270 Mhz between channels 7 and 51 may be the most appropriate location for DTV broadcasting. Because of the limited availability of spectrum, the Commission recognized that during the DTV transition some broadcasters would be required to move their DTV operations to a channel outside the transition core area. It is anticipated, however, that those broadcasters will move their DTV operations to a channel in the core spectrum when one becomes available. Id., para. 36.

The DTV Table of Allotments during the transition<sup>3</sup> to DTV, however, is based upon channels 2-51 (and not channels 7-51). If the Commission concludes that channels 2-6 are suitable for DTV, the Commission will consider retaining these channels for DTV and

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<sup>3</sup> The Table of DTV Allotments issued with the Sixth Report & Order is intended to meet DTV spectrum needs during the transition; facilitate the early recovery of spectrum from channels 60 to 69; and facilitate the recovery of 138 Mhz of spectrum being used for analog broadcasting. Id., para. 76.

adjusting the final DTV core spectrum to encompass channels 2-46 rather than channels 7-51. In that event, WRAL will have the option of using its existing NTSC channel 5 as its digital channel and surrendering its transition DTV channel 53.<sup>4</sup>

If the Commission concludes, however, that the lower VHF channels 2-6 are not suitable for DTV, the final Table will be based upon channels 7-51. *Id.*, para. 83. In that event, neither NTSC channel 5 nor DTV transition channel 53 will be in the final DTV core spectrum. In this eventuality, the Commission has stated that "[s]tatements, with both NTSC and DTV channels outside the core spectrum, will be assigned new channels within the core from recovered spectrum." *Id.*, para. 84.<sup>5</sup> See also *Id.*, para. 36.

Capitol is concerned that following the transition the Commission intends to limit the assignment of channels to those channels within the final DTV core that are then available. However, there may be no available unused spectrum within such a limited base that would permit WRAL-TV to provide DTV service to a geographic area comparable to its current service area because during the transition period<sup>6</sup> LPTV and TV translator stations, other non-eligible broadcasters,<sup>7</sup> and/or new entrants will have occupied all available spectrum not

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<sup>4</sup> Wherever feasible, broadcasters will be permitted to switch their DTV service to their existing NTSC channels at the end of the transition provided that the NTSC channel is within the "final DTV core spectrum." *Id.*, para. 84.

<sup>5</sup> The Commission noted that there are 68 instances in the current Table where both channels are outside of channels 7-51 and 89 instances where both channels are outside of channels 2-46. *Id.*, para. 84.

<sup>6</sup> During the DTV transition, new and displaced LPTV and TV translator stations may operate over unused spectrum. *Id.*, para. 95. Other non-eligible broadcasters will also be allowed to convert their existing NTSC operations to DTV service at any time during the transition, provided those operations are within the core spectrum area. *Id.*, para. 95.

<sup>7</sup> "Other non-eligible broadcasters" includes persons which at the time of "initial eligibility for DTV licenses" were not licensed to operate a television broadcast station and/or did not hold a permit to construct such a station. See *Id.*, para. 8. The DTV Table, however, "accommodates more than

assigned to "eligible existing broadcasters." It may also be possible that in some service areas there will be no recovered spectrum. If there is no unused or unrecovered spectrum available, WRAL, like other stations with both NTSC and DTV channels outside the final DTV core spectrum, could find itself without a DTV channel that would permit replication of its current NTSC service area.

Capitol therefore seeks assurance that the Commission will take steps during the transition to assign a DTV channel that will permit replication of the NTSC service area to eligible existing broadcasters whose DTV transition channel and existing NTSC channel are outside the final DTV core spectrum even if LPTV or TV translator stations, other non-eligible broadcasters, or new entrants must be displaced. In making such assignments, the Commission should make certain that the new assigned DTV channel within the DTV core spectrum replicates the broadcaster's existing NTSC channel coverage.

Capitol also is concerned that it will face the prospect of making two transitions to DTV as the result of having both its NTSC and transition DTV channels outside the final DTV core spectrum. See *Id.*, para. 41. Among other burdens, this would mean that Capitol would twice incur transition costs. With respect to allocating spectrum at channels 60-69, the Commission has stated that it "will address whether to require compensation by new service providers to full service or low power operations for the displacement or relocation of such operations from channels 60-69." *Id.*, para. 80. Similarly, Capitol believes that

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100 new NTSC stations and provides DTV allotments for these stations." *Id.*, par. 78. To the extent that any of these 100 new stations were not "eligible existing broadcasters," they should not be ranked ahead of or equal to "eligible existing broadcasters" which do not have a NTSC or DTV transition channel in the final DTV core spectrum. Presumably, such new stations are "other non-eligible broadcasters" or new entrants.

eligible existing broadcasters which must make two transitions to DTV because their NTSC and transition DTV channels are outside the final DTV core should be compensated for making the second transition. Capitol requests that the Commission reconsider its Sixth Report & Order to provide such compensation.

#### The Decision Regarding Channels 2-6 Should Be Reconsidered

As noted above, WRAL-TV telecasts over channel 5 in Raleigh, N.C.; therefore, Capitol is interested in issues specifically affecting channels 2-6. Capitol agrees with and supports the recently filed petition of "Certain Channel 2-6 Licensees" requesting that the Commission reconsider its decision in para. 83 of the *Sixth Report and Order* and explicitly provide that all Channels between 2 and 51 will be fairly and equally considered for the DTV core channels ultimately adopted, without bias or presumptions against any of them. *See* Petition for Reconsideration of Decision Regarding Channels 2-6 of Certain Channel 2-6 Licensees, filed May 29, 1997. This is especially important to Capitol because of the possibility that some eligible existing broadcasters will have neither their NTSC channel or a DTV transition channel within the final DTV core spectrum.<sup>8</sup> Capitol therefore incorporates herein, by reference, the Petition for Reconsideration of Decision Regarding Channels 2-6 and requests the same relief as set forth therein.

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<sup>8</sup> Indeed, this makes it all the more important that the Commission provide the clarification and/or reconsideration that Capitol requests with respect to preferential assignments for eligible existing broadcasters that do not have a NTSC channel or a DTV channel in the final DTV core spectrum.

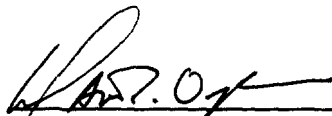


## CONCLUSION

Wherefore, Capitol respectfully requests that the Commission (1) clarify or reconsider that, in the event an "eligible existing broadcaster" does not have a NTSC channel or a DTV transition channel within the final DTV core spectrum, the Commission will assign such broadcaster a channel within the final DTV core spectrum that will permit replication of its current NTSC service area even if it is necessary to displace an existing LPTV or TV translator station, other non-eligible broadcaster, or new entrant; and that such broadcaster shall be compensated from spectrum auction proceeds from recovered spectrum for the costs of being required to make the second DTV transition and, (2) reconsider its decision in para. 83 of the *Sixth Report and Order* to make clear that the Commission, at present, has no reason to question the appropriateness of VHF channels 2-6 for digital broadcast and that all channels between 2 and 51 will be fairly and equally considered for the ultimate core of channels set aside for digital television use.

Respectfully submitted,

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